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March 23, 2000

Via Hand-Delivery

K. David Waddell

Executive Secretary

Tennessee Regulatory Authority

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Nashville, Tennessee 37219

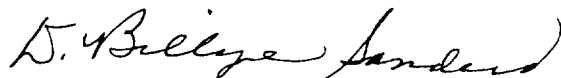
Re: Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval for Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC; Docket No.99-00909 – Pre-Filed Rebuttal Testimony of the Applicant and Joint Petitioners

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the rebuttal testimony of Ward Huddleston, J. Maxwell Williams, John McCullough and Wade Stinson. Confidential exhibits are attached to Mr. Huddleston's testimony which are filed under seal pursuant to the protective agreement/Order in this docket.

Applicant and Joint Petitioners object to the documents and excerpts from the documents referenced in the exhibits to William J. Barta's testimony on behalf of the TCTA being entered in the record, as well as to the excerpts from documents referenced on page 13 and 14 of Mr. Barta's testimony as irrelevant to these proceedings. Subject to and without waiver of the foregoing objection, the Applicant and Joint Petitioners have included in their rebuttal testimony responses regarding the documents.

Sincerely,



D. Billye Sanders

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

K. David Waddell

March 23, 2000

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DBS:lmb

Enclosures

cc: Parties of Record
John Knox Walkup, Esq.
J. Maxwell Williams, Esq.
Ward Huddleston, Esq.

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 23rd day of March, 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.

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Tennessee, LLC and Memphis Networkx,
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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

OFFICE OF THE
EXECUTIVE SECRETARY

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC)

DOCKET NO. 99-00909

**PRE-FILED REBUTTAL TESTIMONY OF
JOHN McCULLOUGH ON BEHALF OF MLGW**

Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE AND BUSINESS ADDRESS.

A. My name is John McCullough. I am Vice President of Finance and Secretary-Treasurer of Memphis Light Gas and Water Division, a Division of the City of Memphis, Tennessee. My business address is Memphis Light Gas & Water Division, 220 South Main Street, Memphis, Tennessee 38103.

Q. WHAT DOES YOUR POSITION WITH MLGW ENTAIL?

A. I am responsible for establishing, monitoring and maintaining company-wide financial and administrative objectives, policies, programs and practices which ensure MLGW a continuously sound financial structure. My responsibilities include budget, rates, financial management, cashier, payroll, general accounting, bond issues and investments.

Q. WHAT IS YOUR ROLE IN THE TELECOMMUNICATIONS VENTURE?

A. I was involved in the evaluation of the business plan for this venture and I helped negotiate the operating agreement. I currently serve on the Board of Governors for Memphis Networkx.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I am a graduate of Auburn University where I received a Bachelor's degree in Electrical Engineering. In addition, I have a Masters of Business Administration degree from Memphis State University. I am a Licensed Professional Engineer in the state of Tennessee.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. I joined MLGW in 1973 as a Junior Engineer and also served as Assistant and Association Engineer; Construction Schedulers; Supervisor, Budget and Rates; Manager, Budget, Rates and Plant; Manager, Finance and Treasury; and the acting Vice President, Finance and Secretary-Treasurer. In 1998 I became the Vice President, Finance and Secretary-Treasurer.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to set forth in greater detail the measures that MLGW has already taken in order to prevent subsidy of Memphis Networkx and to set forth the procedures that MLGW intends to put in place if the application and joint petition are approved in this docket. In addition, I will respond to certain statements made by William Barta in the testimony he filed on behalf of the Tennessee Cable Telecommunications Association (TCTA). I will also provide testimony that relates to issues 3, 4, 6, 7, 8 and 9 of the issues list approved by the TRA in this docket.

Q. WHAT MEASURES HAS MLGW TAKEN TO PREVENT CROSS-SUBSIDIZATION OF MEMPHIS NETWORKX?

A. A subsidy only occurs if MLGW brings to bear its assets and resources for the benefit of Memphis Networkx without proper allocations and/or payment. Memphis Networkx is a separate legal entity from MLGW. MLGW's role in Memphis Networkx is an investor/partial owner. Memphis will have no common employees with MLGW and all transactions with Memphis Networkx will be at arm's length. Attached as Exhibit A to my testimony are the safeguards against cross-subsidy that MLGW and Memphis Networkx have or will put in place. We believe these safeguards are consistent with the safeguards approved by the TRA in The Chattanooga Electric Power Board

Case (Docket No. 97-007488). Although I am not a lawyer, I understand that the FCC's Affiliate Transaction Rules (47 CFR § 32.27) and the structural separation provisions of 47 USC 272(d) are not applicable to MLGW and Memphis Networkx, I have been advised that Exhibit A is consistent with the spirit of those provisions.

Q. WHAT MEASURES HAS MLGW TAKEN TO PREVENT CROSS-SUBSIDATION BETWEEN THE TELECOMMUNICATIONS DIVISION AND THE OTHER DIVISIONS OF MLGW?

A. Costs that are common to two or more divisions are allocated to the respective divisions through the general ledger system. The system has preset percentages to each division for several thousand charge codes through which all expenditures must pass. For example:

<u>Charge Code</u>	<u>Electric</u>	<u>Gas</u>	<u>Water</u>
Office and clerical labor in the budget department	57%	27%	12%

The percentages are determined by one of several allocation methods based on the number of customers, revenues, or customized formulae. The allocation methods are updated periodically.

A fourth allocation to telecom has been added and a percentage assigned for several employees' labor and for disbursements. The percentage can of course be 100% to a division if appropriate.

Q. Does MLGW have an incentive to subsidize Memphis Networkx?

A. No.

Q. PLEASE RESPOND TO MR. BARTA'S TESTIMONY ON PAGE 7, LINE 23 THROUGH PAGE 8 LINE THREE IN WHICH HE INDICATES THAT "....THE REGULATED UTILITY SIMPLY DOES NOT HAVE THE INCENTIVE TO MINIMIZE ITS COST."

A. First, to the extent that Mr. Barta believes this statement relates to MLGW and Memphis Networkx his initial premise is in error. Mr. Barta indicates on page 8, line 21 through 23 that Memphis Networkx is MLGW's "non-regulated telecommunications venture". This is not accurate. Memphis Networkx will be subject to regulation by the TRA. Second, contrary to Mr. Barta's opinion, MLGW has every incentive to minimize its cost in the provision of electric as well as gas and water services. Certain MLGW utility services may be

subject to little or no competition, however, the threat of deregulation and competition is an incentive to lower costs. In actuality, MLGW's operational practices and policies have translated into MLGW having the lowest combined residential utility rates in the country. In the last six years, our combined utility budgets have had a near zero percent increase, which demonstrates that we have both kept our costs down in addition to absorbing inflation. MLGW hopes that their share of revenues from this venture will enable them to reduce their current electric utility rates (after repayment of all loans received from the Electric Division). Third, even if MLGW's services were not subject to competition it would have no incentive to subsidize the operation of Memphis Network, because Memphis Network is not a wholly owned subsidiary of MLGW. Since Memphis Network is partially owned by another entity a percentage of any subsidy would inure to the benefit of A&L, not to MLGW.

Q. WOULD THERE BE AN INCENTIVE FOR TIME WARNER TO SUBSIDIZE ITS COMPETITIVE TELECOM SERVICES COMPANY WITH ASSETS FROM ITS REGULATED MONOPOLY CABLE TELEVISION OPERATIONS?

A. Yes. Mr. Barta's statements regarding incentives to subsidize would apply to Time Warner in that the Time Warner entities, I believe, are ultimately owned by the same parent and cross subsidy of the telecom operation by cable assets would enable Time Warner to shift cost to the monopoly service and away from the competitive service.

Q. HAS THE TRA ADOPTED ANY RULES, REGULATIONS OR POLICIES THAT WOULD PREVENT TIME WARNER FROM SUBSIDIZING ITS TELECOM OPERATIONS WITH ITS MONOPOLY CABLE OPERATIONS?

A. Not to my knowledge.

Q. PLEASE COMMENT ON MR. BARTA'S TESTIMONY REGARDING THE NEED FOR A FORMAL SET OF TERMS AND CONDITIONS GOVERNING AFFILIATE TRANSACTIONS BETWEEN MEMPHIS NETWORK AND MLGW.

A. Mr. Barta states on page 9, line 10 of his testimony that "Based upon my discussions with company representatives and the responses to discovery, there did not appear to be a need for a formal set of terms and conditions governing the affiliate transactions between Memphis Network and the utility divisions of MLGW."

Mr. Barta appears to be saying that if we do what we say we are going to do in our testimony and responses to the data requests, then no formal set of terms and conditions governing affiliate transactions need be adopted by the Authority. However, Mr. Barta states that he does not believe that MLGW plans to implement these procedures, based upon the review of numerous documents. The documents that he cites involve various preliminary discussions regarding the telecommunications project, which do not represent MLGW's ultimate decision regarding the form of the telecommunication venture. Mr. Barta has reviewed these documents out of context and has made unreasonable conclusions regarding them.

On November 8, 1999 MLGW and A&L Networks-Tennessee, LLC entered into the umbrella agreement and Operating Agreement which were attached as Exhibit M to the supplemental filing on January 11, 2000, and Exhibit E to the application in this docket, respectively. These are the documents that govern the relationship between MLGW and A&L and described the joint venture. Many things were discussed prior to entering into the operating agreement and the umbrella agreement however, these agreements and the testimony in this docket set forth the current plan and concept for the venture.

Q. WOULD YOU COMMENT ON EACH OF THE DOCUMENTS THAT MR. BARTA LISTS IN HIS MEMO?

A. Yes.

Q. LET'S START WITH WJB-2 IN WHICH MR. BARTA DEALS WITH HIS CONCERN OVER MEMPHIS NETWORK'S USE OF MLGW'S EXISTING INFRASTRUCTURE. DOES MLGW INTEND TO ALLOW MEMPHIS NETWORK TO USE ITS EXISTING INFRASTRUCTURE?

A. Memphis Networkx may negotiate use of MLGW's existing infrastructure on an arms length basis just as any other carrier operating in Memphis may do. With respect to pole attachments Memphis Networkx will have to pay the highest rates that MLGW charges to any carrier.

Q. WOULD YOU ADDRESS EACH DOCUMENT THAT MR. BARTA LISTS IN EXHIBIT WJB-2?

A. Except as noted below, I will defer to Wade Stinson who has also filed rebuttal testimony.

1. The April 22, 1990 draft memorandum of understanding - This document is a draft, as indicated in the heading. Arthur D. Little, Inc.

("ADL") drafted this document, however, this draft was never circulated to the city. It was never signed by anybody, nor do we expect it to be signed.

2. **September 29, 1999 memo from Michael Kissell to Wade Stinson** - Wade Stinson will address this memo in his testimony.

3. **November 25, 1999 enter departmental communication from Mike Kissell** - Wade Stinson will address this in his testimony.

4. **A&L Networks LLC December 1, 1998 response to MLGW request for proposal for strategic telecommunications partnership** - Wade Stinson will address this in his testimony.

5. **MSF Network Technology response to MLGW request for proposal for telecommunications strategic partner** - Wade Stinson will address this in his testimony.

6. **BellSouth Business Systems response to MLGW request for proposal for Telecommunication Strategic Partner** - Wade Stinson will address this in his testimony.

7. **March 24, 1999 memo from Erik Wetmore to MLGW Corp.** - Wade Stinson will respond to this correspondence in his testimony.

8. **March 2, 1990 from Joel Havorson of Arthur D. Little to Wade Stinson and Alex Lowe** - Wade Stinson will respond to this letter.

9. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little, Inc. and Nortel Networks to MLGW for a Strategic Telecommunications partnership** - Wade Stinson will respond to this in his testimony.

Q. COULD YOU ADDRESS THE DOCUMENTS THAT MR. BARTA REFERS TO IN WJB-3 REGARDING HIS CONCERN OVER MEMPHIS NETWORKX ACCESS TO MLGW PERSONNEL AND CUSTOMER INFORMATION?

A. Yes.

Q. WILL MEMPHIS NETWORKX HAVE UNRESTRICTED ACCESS TO MLGW PERSONNEL?

A. Absolutely not. Memphis Networkx has its own employees. None of them are common employees with MLGW. MLGW has used its own resources to

determine whether it wanted to become involved in a telecommunication venture, what form that would take and to takes steps to protect its investment in the proposed venture. These are proper expenses of MLGW which have been allocated to the electric division and will be transferred to the telecommunication division upon TRA approval.

Q. WILL MEMPHIS NETWORKX HAVE UNRESTRICTED ACCESS TO MLGW'S CUSTOMER INFORMATION?

A. MLGW's customer information is available to citizens of Tennessee through appropriate requests under the Public Records Act. Memphis Networkx may obtain this information on the same basis as any other person or entity pursuant to MLGW's procedures for requesting such information.

Q. PLEASE COMMENT ON EACH OF THE DOCUMENTS SET FORTH IN WJB-3.

A. Wade Stinson will address all of the documents in WJB-3.

Q. WILL YOU COMMENT ON THE DOCUMENTS SET FORTH IN WJB-4 REGARDING MR. BARTA'S CONCERN REGARDING MLGW NAME RECOGNITION?

A. Wade Stinson will address the documents mentioned in WJB-4.

Q. WILL MEMPHIS NETWORKX USE THE MLGW NAME?

A. The telecommunication services provided by the joint venture between MLGW and A&L Networks Tennessee, LLC will be provided under the name of Memphis Networkx. The ownership of Memphis Networkx will be freely disclosed.

Q. WILL YOU COMMENT ON THE EXCERPTS FROM DOCUMENTS THAT MR. BARTA HAS PROVIDED IN WJB-5?

A. Yes.

Q. HAS MLGW DEPLOYED FACILITIES ON BEHALF OF MEMPHIS NETWORKX WITHOUT RECEIVING PROPER APPROVAL FROM THE TRA?

A. No.

Q. WILL YOU RESPOND TO THE EXCERPTS FROM THE DOCUMENTS LISTED IN EXHIBIT WJB-5?

A. Yes.

1. June 1 1999 letter from Alex Lowe to Wade Stinson and Larry Thompson - Wade Stinson will respond to this letter.

2. April 1, 1999 letter from Alex Lowe form J. B. Hollingsworth General Manager, BellSouth Telecommunications - Wade Stinson will respond to this letter.

3. May 24, 1999 meeting notes - Wade Stinson will respond to this letter.

4. September 29, 1999 memo from Michael Kissell to Wade Stinson - Wade Stinson will respond to this memo.

5. October 1999 agreement between MLGW and A&L Networks Tennessee to establish a joint venture to provide telecom services - I don't know what point Mr. Barta is trying to make with this document however, it is an unexecuted draft of the umbrella agreement. The executed document is dated November 8, 1999 and was filed in this docket as Exhibit M to the supplement to the application.

Q. WILL MR. STINSON RESPOND TO WJB-6?

A. Yes.

Q. MR. BARTA STATES THAT HE IS DISTURBED BY "THE COMPANIES' EFFORTS TO RESTRICT DISCLOSURE OF INFORMATION AND MATERIAL THAT WOULD PERMIT AN OBJECTIVE REVIEW OF ITS OPERATIONS AND AFFILIATE TRANSACTIONS." PLEASE RESPOND TO THIS.

A. MLGW has not sought to restrict such disclosure. The memos that Mr. Barta cites in his exhibits are excerpts from approximately 5,000 pages of documents that MLGW produced pursuant to a public records request from John Farris, counsel for TCTA and Time Warner and from responses to discovery requests in this proceeding. Certainly, any private company such as Memphis Networx, A&L, Time Warner or Nextlink is concerned about their proprietary and competitively sensitive documents being disclosed to the public. This is evidenced by the fact the counsel for Time Warner and

Nextlink proposed additional language for the protective agreement filed in this docket to ensure any proprietary responses to our data requests were kept out of the offices of MLGW and the public files.

Mr. Barta's statements appear to be intended to raise unfounded and negative innuendoes toward the applicant and joint petitioners.

Q. PLEASE RESPOND TO THE STATEMENT REGARDING THE MEETING NOTES ON PAGE 14, LINES 10-18 OF MR. BARTA'S TESTIMONY.

A. It is my understanding that the notes referenced on page 14 of Mr. Barta's testimony were prepared by an intern from ADL during a brainstorming meeting set up by ADL, at which I was present, which occurred in July, 1999. I believe the notes represent the random thoughts that occurred at this meeting. There was never any discussion as to "slipping" the budget through the Board. The December date appears to reference the date the city council passed the budget. Our expenditures, like all capital expenditures, were included as line items in the approved budget. Obviously, the author of the notes did not know the parties given the misspelling of their names, and did not fully understand some of the issues being discussed.

Q. WHAT REQUIREMENTS, IF ANY, ARE NECESSARY TO ENSURE THAT STARTUP EXPENSES ALREADY INCURRED BY MLGW ARE CORRECTLY IDENTIFIED AND PROPERLY ALLOCATED?

A. An accumulation of all expenses relating to telecom for 1999 in the amount of approximately \$2.2 million will be shown as a loss on the Electric Division's 1999 income statement under other income gain or loss equity investment, telecom.

The expenses are comprised of: 1) 50% of the loss on the Memphis Network 1999 operating income statement; and 2) an estimate of Electric Division expenses relating to telecom for 1999.

In accordance with MLGW Board Resolutions the Telecom Division will reimburse the Electric Division for the above loss after TRA approval and subsequent inter-division loan of \$20,000,000.

Q. HAVE ANY TAX PAYER FUNDS BEEN USED FOR THE TELECOMMUNICATIONS PROJECT AND IS IT ANTICIPATED THAT ANY TAX PAYER FUNDS WILL BE USED FOR MLGW'S INVESTMENT IN MEMPHIS NETWORK?

- A. No tax payer funds have been used for the telecommunications venture, nor are any going to be used for MLGW's investment in Memphis Networkx. The MLGW Board of Governors has authorized an interdivisional loan of up to \$20 million from the Electric Division to the Telecommunications Division of MLGW. The approval for the initial draw of that loan in the amount of approximately \$5,500,000 has been approved by the Tennessee Comptroller's Office pursuant to the provisions of TCA § 7-52-402(2). A letter of approval dated November 24, 1999 was attached as Exhibit N to our supplemental filing which was made on January 11, 2000. Since the filing of that supplement and the filing of Ward Huddleston's direct testimony, MLGW has sought and obtained a correction to the amount approved from \$5,300,000 to approximately \$5,500,000. The request for the adjustment dated February 3, 2000 and the response approving the request from the comptroller of the treasury dated February 4, 2000 are attached to my testimony as Exhibit B. MLGW intends to seek approval of draws on the \$20 million loan as needed.

The Telecommunications Division intends to make an initial investment of approximately \$5.3 million dollars in Memphis Networkx. The Telecommunications Division will use revenues from Memphis Networkx to pay off the loan.

The funds of the Electric Division that will be loaned to the Telecommunications Division are funds generated by the Electric Division from services provided to electric rate payers. These are not tax payer funds. These funds are now classified as cash reserves of the Electric Division. It should also be noted that both the Umbrella Agreement (page 6, paragraph 10) and the Operating Agreement (Section 14.8, pages 38 and 39) provide that "neither the tax revenues nor the taxing power of the City of Memphis, Tennessee are in any way pledged or obligated under this agreement."

Q. HAS MLGW COMPLIED WITH THE PROVISIONS OF T.C.A. § 7-52-402-405?

- A. With respect to T.C.A. § 7-52-402, MLGW is not providing the services directly. MLGW has formed a Telecommunications Division within the Electric Division in order to separate and allocate cost attributable to its investment in Memphis Networkx, telecommunications joint venture. As stated earlier, we have obtained approval from the comptroller from an interdivisional loan, however no funds have been advanced under the loan as we are awaiting TRA approval.

With respect to T.C.A. § 7-52-403(b), as indicated above, MLGW is not providing the service directly. However, it is my understanding that Memphis Networkx does not plan to provide communications services in the

territories of incumbent local exchange carriers with less than 100,000 access lines, except as may be allowed by state or federal law. With respect to T.C.A. § 7-52-404 – tax equivalent payments, payments will be based upon revenues that we receive from our ownership interest in Memphis Networkx. Again, MLGW is not providing the services directly. MLGW will continue to comply with Tennessee statutes that proscribe transfers from municipal utilities to the city for in-lieu-of-tax payments. Memphis Networkx will pay all applicable franchise fees.

With respect to T.C.A. § 7-52-405, MLGW will charge Memphis Networkx the highest rate it charges to any person or entity for a comparable pole attachment. MLGW will also charge Memphis Networkx any applicable rights-of-ways fees, charges or payments required by state or local law that it would charge to any other company. Consequently, MLGW has complied with and/or will comply with T.C.A. § 7-52-402-405 as situations arise that require compliance.

Q. WHAT CONDITIONS, RULES AND/OR REPORTING REQUIREMENTS, IF ANY, ARE NECESSARY TO INSURE COMPLIANCE BY MLGW AND MEMPHIS NETWORKX WITH THE PROVISIONS OF T.C.A. § 7-52-402-405?

A. I do not believe that any condition rules or reporting requirements are necessary to insure compliance by MLGW and Memphis Networkx with the provisions of T.C.A. § 7-52-402-405. I am not a lawyer, however, it is my understanding that some of these provisions are not within the TRA's jurisdiction to enforce. For example, the comptroller must approve our inter-divisional loan and we have to make tax equivalent payments to the City of Memphis. In any event, regardless of the enforcing entity, these requirements are in Tennessee statutes and MLGW intends to comply with the law. If we do not comply with provisions that the TRA has jurisdiction to enforce, this agency has the power to investigate, ask for voluntary compliance and/or issue a show-cause order. We think that this is sufficient to insure compliance.

Q. WHAT CONDITIONS, RULES, OR REPORTING REQUIREMENTS, IF ANY, ARE NECESSARY TO ENSURE APPLICANTS' AND PETITIONERS' COMPLIANCE WITH THE PROHIBITION AGAINST ANTI-COMPETITIVE PRACTICE PROVISION OF T.C.A. § 7-52-103(d)?

A. As stated above, T.C.A. § 7-52-103(d) is the law. MLGW intends to comply with the law. To the extent that the TRA has regulatory authority over our compliance with the law, the TRA has the authority to do investigations and

issue show-cause orders, etc., if they believe we are violating the law and order us to comply with it. We believe that is sufficient.

Q. WHAT CONDITIONS, RULES OR REPORTING REQUIREMENTS, IF ANY, ARE NECESSARY TO INSURE APPLICANT'S AND PETITIONERS' COMPLY, TO THE EXTENT APPLICABLE, WITH T.C.A. § 65-5-208(c)?


A. I am no lawyer, but I understand there is some question about whether this provision is applicable to MLGW and Memphis Networkx. If it is applicable to us, MLGW is already putting into place structure and practices that will safeguard against anti-competitive practices pursuant to T.C.A. § 7-52-103(d) which should also satisfy T.C.A. § 65-5-208(c). If more is required of us than that, and the TRA tells us what it is, then we will comply with it. Again, no condition, rules or reporting requirements are necessary because we intend to comply with the law and the TRA has the ability to investigate and order enforcement of the law.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

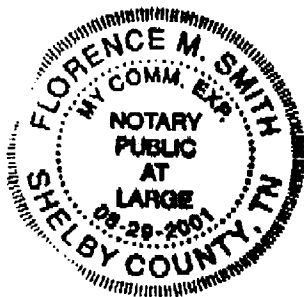
I, John W. McCullough, declare under penalty of perjury that I am authorized by Memphis Light, Gas and Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

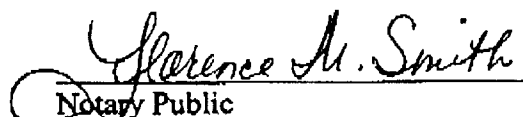


John W. McCullough
Vice President, Finance and
Secretary-Treasurer
Memphis Light, Gas and Water Division

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and Subscribed before me this 23rd day of March, 2000.





Notary Public
My Commission Expires: MY COMMISSION EXPIRES AUG. 29
MY COMMISSION EXPIRES AUG. 29, 2001

PROPOSED SAFEGUARDS
DOCKET NO. 99-00909
Exhibit A

The following safeguards have been proposed by Memphis Networkx, LLC and MLGW, as a means to ensure that cross subsidization will not occur in the provision of telecommunications services by Memphis Networkx, LLC. These safeguards have been drawn from three areas: (1) the stipulations filed in TRA Docket NO., 97-07488, Application of Electric Power Board of Chattanooga for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services; (2) the FCC's affiliate transaction rules (47 C.F.R. § 32.27); and (3) the structural separation provisions contained in 47 U.S.C. § 272 (b). Memphis Networkx does not agree that the provisions of either the affiliate transaction rules, or the structural separation statute apply to them, however, they have agreed to voluntarily abide by their requirements, with certain exceptions noted below.

I. Applicable Safeguards from the Electric Power Board of Chattanooga Stipulations

The majority of the stipulations contained in the Power Board case do not apply to the current situation given the separate identities of Memphis Networkx and MLGW. Memphis Networkx and MLGW has agreed to abide by the following stipulations, which have been modified to apply to this application:

- cost allocation between the Electric Division and Telecommunications Division of MLGW shall be governed by the MLGW cost allocation policy summarized in John McCullough's rebuttal testimony;
- asset and services transfers shall be governed by the FCC Affiliate Transaction Rule as described further below;
- MLGW shall treat all requests from Memphis Networkx for utility services in the same manner and within the same time period as those requests from a third party;
- customer information obtained by MLGW shall be provided to Memphis Networkx in the same manner as to any other citizen in Tennessee, consistent with applicable law;
- although at this point Memphis Networkx does not intend to include any inserts into bills generated by MLGW, any and all inserts requested to be included in these bills by any third parties, including

Memphis Networkx, shall be governed by the previously established policy of MLGW attached hereto;

- MLGW shall not state in any advertising, promotional materials, or sales efforts, that consumers who purchase products or services from Memphis Networkx will receive preferential treatment in the provision of services from MLGW; and
- if any joint marketing between MLGW and Memphis Networkx is to take place, the customer shall be informed (a) of the separate identities of MLGW and Memphis Networkx, (b) that the products and services of MLGW and Memphis Networkx are distinct and separately offered and priced, and (c) that the customer is under no obligation to select services or products from one without purchasing any services or products from the other.

II. Safeguards from the FCC Affiliate Transaction Rules

For asset transfers between MLGW and Memphis Networkx, all such transfers shall be recorded by Memphis Networkx in its regulated accounts as follows:

- asset transfers between MLGW and Memphis Networkx pursuant to a tariff shall be recorded at the tariffed rate;
- for all transfers by Memphis Networkx to MLGW, the value recorded shall be the fair market value;
- for all transfers by MLGW to Memphis Networkx, the value recorded shall be the fair market value.

Regarding the provision of services between Memphis Networkx and MLGW:

- services provided between MLGW and Memphis Networkx pursuant to a tariff shall be recorded at the tariffed rate;
- all other services provided by Memphis Networkx to MLGW shall be recorded at the fair market value;
- all other services received by Memphis Networkx from MLGW shall be recorded at the fair market value.

Memphis Networkx and MLGW agree to make a good faith determination of fair market value in all of the above proposals.

III. Safeguards from the Federal Structural Separation Provisions

Memphis Networkx agrees to abide by the following terms, consistent with the provisions set forth in 47 U.S.C. § 272 (b). Memphis Networkx does not agree, however, to require that the members of the Board of Governors be separate from the officers of the member entities. Memphis Networkx and MLGW will agree:

- to conduct separate operations;
- to maintain separate books, records and accounts;
- to have separate officers and employees, except for the provision noted above; and
- to conduct all transactions between MLGW and Memphis Networkx at arm's length, and to reduce any such transactions between Memphis Networkx and MLGW to writing which shall be available for public inspection as provided under applicable law.

Memphis Light, Gas and Water Division Policy Statement

SUBJECT: BILL MAILERS AND POSTAGE

I. PURPOSE

To provide written guidelines for evaluating requests for inserts in utility bill mailers, to assure fairness and uniformity in handling such requests, and to maintain economical postage rates.

II. SCOPE

This policy applies to all requests for inserts in MLGW utility bill mailers.

III. POLICY STATEMENT

It is the policy of MLGW to handle all requests for inserts in its bill mailers fairly using the following uniform standards:

1. It is the policy of MLGW to encourage those who wish to include information in its bill mailers to use the "Plus Coupon" program to benefit MIFA. Bill inserts may not be used to solicit funds or donations of any kind, or to promote the sale of any product or service other than through the "Plus Coupon" program.
2. No separate bill inserts will be accepted which are political or partisan in nature.
3. No bill inserts will be accepted which result in an increase in postage.

IV. PROCEDURE

All requests to have information inserted in MLGW's bill mailer must be submitted in writing to MLGW 90 days prior to the distribution date, and submitted for approval to: Manager, Communication Services, 220 South Main, Memphis, TN 38103.

LAW OFFICES
STRANG, FLETCHER, CARRIGER, WALKER, HODGE & SMITH, PLLC

CARLOS C. SMITH
 WILLIAM C. CARRIGER
 RICHARD T. HUDSON
 FREDERICK L. HITCHCOCK
 EWING STRANG
 LARRY L. CASH *
 CHRISTINE MARE SCOTT *
 J. ROBIN ROGERS *
 D. MICHAEL LUNOWIAN
 JAMES L. CATANEARO, JR. *
 GREGORY O. WILLETT
 MARK W. SMITH *
 TIMOTHY H. NICHOLS *
 STEPHEN D. SARHAM

400 KRYSTAL BUILDING
 ONE UNION SQUARE
 CHATTANOOGA, TENNESSEE 37402-2514
 TELEPHONE 423-265-2000
 FACSIMILE 423-756-8861

S. BARTOW STRANG
 1902-1984
 JOHN E. FLETCHER
 1978-1991
 JOHN S. CARRIGER
 1908-1988
 JOHN E. FLETCHER, JR.
 1911-1974
 ALBERT L. HODGE
 1910-1987
 F. THORNTON STRANG
 1920-1988

* ALSO LICENSED IN GEORGIA
 * ALSO LICENSED IN ALABAMA
 * ALSO LICENSED IN ARIZONA

February 3, 2000

OF COUNSEL
 ROBERT KIRK WALKER

The Honorable David H. Bowling
 Acting Director
 State of Tennessee
 Comptroller of the Treasury
 Division of Local Finance
 500 James K. Polk State Office Building
 505 Deaderick Street
 Nashville, Tennessee 37243-0274

Re: Memphis Light, Gas & Water Division / Telecommunications
 Inter-division Loan

Dear Mr. Bowling:

By letter dated November 24, 1999, to Mr. John McCullough of Memphis Light, Gas & Water Division, a copy of which is enclosed, your office approved an inter-division loan in an amount not to exceed \$5,300,000.

In reviewing our file materials, it appears that the requested approval amount should have been approximately \$5,332,800, rather than the amount stated in the request to your office. We apologize for this oversight, and respectfully request that your office revise its approval to permit an inter-division loan in an approximate amount of \$5,500,000.

Should you have any further questions or require further information, please feel free to contact me or John McCullough in Memphis [(901) 528-4311]. As always, thank you for your assistance in this and other matters.

Sincerely,



Mark W. Smith
 For the Firm

Enclosure

cc: Mr. John McCullough ←
 J. Maxwell Williams, General Counsel



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF LOCAL FINANCE
SUITE 500 JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0274
PHONE (615) 741-4276
FAX (615) 532-9237

February 4, 2000

Mr. John McCullough
Vice-President, Finance and
Chief Financial Officer
Memphis Light, Gas and Water Division
PO Box 430
Memphis, Tennessee 38101-0430

Dear Mr. McCullough:

On November 24, 1999 we issued our letter pursuant to the provisions of TCA 7-52-402(2) authorizing the execution of an inter-division loan in an amount not to exceed \$5,300,000 from the Electric Division to the Telecommunications Division of the Memphis Light, Gas and Water Division. We are now in receipt of a letter dated February 3, 2000, from Mr. Mark W. Smith, of the legal firm of Flange, Fletcher, Carriger, Walker, Hodge & Smith, requesting on behalf of the Memphis Light, Gas and Water Division that we revise our approval letter to authorize this inter-division loan to be approximately \$5,500,000. This request, according to Mr. Smith, is based on more recent studies of this project by the Memphis Light, Gas and Water Division.

In accordance with Mr. Smith's request, this constitutes a revision of our November 24, 1999, letter to approve this inter-division loan to be in the amount of approximately \$5,500,000. The loan should be retired within the time period indicated in the information previously submitted to this office.

Sincerely,

A handwritten signature in cursive script that reads "David H. Bowling".

David H. Bowling
Acting Director

Cc: Mark Smith

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC)

DOCKET NO. 99-00909

**PRE-FILED REBUTTAL TESTIMONY OF
WADE STINSON ON BEHALF OF MLGW**

Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE AND BUSINESS ADDRESS.

A. My name is Wade Stinson. I am Vice President of Construction and Maintenance at Memphis Light Gas and Water Division, a Division of the City of Memphis, Tennessee. My business address is Memphis Light Gas & Water Division, 220 South Main Street, Memphis, Tennessee 38103.

Q. WHAT DOES YOUR POSITION WITH MLGW ENTAIL?

A. I am responsible for managing and coordinating the construction and maintenance operations of MLGW, tracking MLGW's performance and comparison with private contractors and overseeing the heavy equipment and transportation fleet. I have worked on evaluating MLGW's entry into the telecommunications business.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I am a graduate of the University of Mississippi, where I received a Bachelor of Science degree in Civil Engineering. I am a registered Professional Engineer in the state of Tennessee.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. I became Vice President of Construction and Maintenance in 1998. I joined MLGW in 1978 as a Junior Engineer and also served as Assistant Manager, Gas Distribution; Manager, Gas Distribution; Manager, Hickory Hill Service Center and Manager of Personnel.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to certain statements made by William Barta in the testimony he filed in this docket on behalf of the Tennessee Cable Telecommunications Association (TCTA).

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. In summary, Mr. Barta has made unsubstantiated innuendoes that were about documents and excerpts from documents that he has obtained from MLGW files and other sources. Many things are discussed and various people have opinions when a project of this magnitude is undertaken. At the time that these memos were written, the Umbrella and Operating Agreement had not been signed and we were still deciding what form the venture would take. MLGW has not restricted access to information as evidenced by the volume and content of documents that have been delivered to the intervenors through open records requests and discovery. MLGW's existing infrastructure will be made available to Memphis Networkx through arms-length negotiations. MLGW facilities are available to other carriers through similar negotiations. MLGW's personnel have been involved in appropriate planning and investigation as to the formulation of the telecommunications venture. These expenses will be allocated to the Telecommunications Division as appropriate, upon approval of this application and Joint Petition by the TRA. No construction that requires TRA approval has been instituted.

Q. DO YOU KNOW WHERE MR. BARTA OBTAINED THE DOCUMENTS FROM WHICH HE QUOTES EXCERPTS IN HIS TESTIMONY AND EXHIBITS?

A. Some of the documents came from my files and the files of other MLGW employees pursuant to a public records request made by John Farris, Counsel to TCTA. MLGW responded to that request in December of 1999. Other documents were obtained from the Applicant and Joint Petitioners pursuant to the responses to data requests filed by TCTA in this docket.

Q. MR. McCULLOUGH RESPONDED TO SOME OF THE CORRESPONDENCE IN MR. BARTA'S EXHIBITS, HOWEVER, HE DEFERRED TO YOU ON OTHERS. LET'S START WITH EXHIBIT WJB-2 WHICH SETS FORTH MR. BARTA'S CONCERNS REGARDING MEMPHIS NETWORK'S USE OF MLGW'S EXISTING INFRASTRUCTURE.

A. 2. **September 29, 1999 memo from Mike Kissell to Wade Stinson** -- Mike Kissell is the Supervisor of Telecom Engineering for MLGW. He coordinates use of electric division infrastructure with third parties, such as CLEC's use of pole attachments. Mr. Barta uses the memo in question to infer that MLGW has leveraged its network for the benefit of Memphis Networkx in a manner that is inconsistent with its proposal to the TRA. That is not true. This memo was dated September 29, 1999 prior to the actual formation of Memphis Networkx as a legal entity, which occurred on November 8, 1999. This memo constitutes discussions regarding planning of the network which may be used by any carrier for a price. The fact of the matter is that none of the network discussed in this memo has been deployed and the contract with Entergy has not been finalized as of the date of this testimony. The most recent draft of the proposed contract with Entergy was provided to TCTA pursuant to the responses of the data requests filed by TCTA. Although the September 29, 1999 memo says that the Entergy project has reached "crunch time", the crunch was obviously Entergy's perception, because none of the fiber discussed in this memo has been deployed.

3. **November 25, 1999 enter departmental communication from Mike Kissell** - This is a trip report which Mike Kissell circulated to various personal at MLGW. When MLGW personnel return from seminars, workshops or conferences they circulate memorandum regarding the information presented at the conference. Mr. Kissell was merely reporting on a telecommunications workshop he attended in October 1998. This document was informational only and is not a reflection of the nature of MLGW telecommunications venture.

4. **A&L Networks LLC December 1, 1998 response to MLGW request for proposal for strategic telecommunications partnership** - This document is just that, a response to a request for a proposal. It has no binding affect on MLGW. This was A&L Networks proposal to MLGW and contains information about how MLGW can leverage its assets to provide telecommunication services, however at that time no decisions had been made as to how telecommunication services would be provided. To the extent that it makes reference to MLGW having leveraged its asset base to provide telecommunication services, this reference is to MLGW's cellular tower leases. As stated earlier, if Memphis Networx wishes to lease any of MLGW facilities it may negotiate leases at arms length. No such leases have been negotiated. Memphis Networx has separate offices from MLGW and there is no plan for joint facilities.

5. **MSF Network Technology response to MLGW request for proposal for telecommunications strategic partner** - Again this is merely an excerpt from a proposal by MFS in response to the RFP. The fact that MFS has made suggestions that MLGW will leverage its right of way and other utilities assets in providing service to existing customers, does not mean that it will in fact do so.

6. **BellSouth Business Systems response to MLGW request for proposal for Telecommunication Strategic Partner** - Again this was a response by BellSouth Business Systems to the RFP. If MLGW had entered the telecommunications business directly through the telecommunications division, not using a separate entity it is likely that it would have utilized joint facilities and allocated those resources similar to the way it allocates the provision of gas, electric and water without providing cross subsidies. However, after studying the project further MLGW decided to create a separate entity. This structure provides an additional safeguard against subsidy between MLGW and such an entity.

7. **March 24, 1999 memo from Erik Wetmore to MLGW Corp.** - Erik Wetmore is a Consultant for Arthur D. Little (ADL). The subject of this memo is the proposed insulation of fiber optic ground wire by Entergy that is also referred to in the September 29, 1999 memo from Mike Kissell to me. As stated earlier, no fiber has been deployed pursuant to this proposal and as of the date of this testimony the contract with Entergy has not yet been executed.

8. **March 2, 1999 letter from Joel Halvorson of Arthur D. Little to Wade Stinson and Alex Lowe** - Joel Halvorson requested information regarding MLGW's existing facilities so that ADL could make

recommendations regarding possible use in a telecom proposal. Again, this information was collected in the planning stages and Mr. Barta has taken it out of context. No utility construction schedules of MLGW have been adjusted to capture the benefit of joint construction with a communications network, as joint construction is no longer contemplated.

9. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little, Inc. and Nortel Networks to MLGW for a Strategic Telecommunications partnership** - This was a proposal presented to MLGW. The proposal was made in an interview that was granted to the three finalists in the RFP process. This is a statement of what MLGW could do, but it is not what MLGW has decided to do.

Q. LET'S NOW GO TO EXHIBIT WJB-3 WHERE MR. BARTA RAISES CONCERNS ABOUT ACCESS TO MLGW PERSONNEL AND CUSTOMER INFORMATION. PLEASE COMMENT ON THE EXHIBITS THAT HAVE NOT BEEN COMMENTED UPON BY OTHER WITNESSES.

A. 1. A&L Networks LLC December 1, 1998 response to MLGW Request for Proposal for Strategic Telecommunications Partner. This is the same response to the RFP that I mentioned earlier in commenting on WJB-2. References are made to benefits to be gained by offering bundled services and shared billing and customer service facilities. Although A&L proposes that this is the way in which the service could be provided, after studying the issue MLGW decided to go with a separate entity to provide the telecom service. If MLGW were to decide in the future to engage in shared billing or joint marketing with Memphis Network it would be done in the same manner as with other third parties. In Section 2.2 .2 of the proposal A&L Networks points out that MLGW provides access to every potential customer in the region. Much of the information in this section was designed to give MLGW an idea of the potential customer base which relates to the potential market for telecommunication services. As stated in its pre-filed direct testimony, MLGW plans to serve other carriers as well as large end-users. At some time in the future it may serve residential customers.

2. March 2, 1999 letter from Joel Halvorson of Arthur D. Little to Wade Stinson and Alex Lowe Again, this was a letter from a consultant making recommendations as to how we should facilitate the planning process. ADL personnel talked with people in our marketing area, however, the marketing research was done by ADL with the help of a local marketing research company. The fact that MLGW had employees involved in investigating whether the Electric Division should get involved in the

telecommunications industry does not mean that Memphis Networkx has unlimited access to MLGW personnel. MLGW had and has responsibility to evaluate the project and the investment. This has been and is appropriate use of MLGW resources for the benefit of MLGW.

3. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little and Nortel Networks to MLGW for Strategic Telecommunications Partnership** - This is the same proposal that was referred to in item 9 of WJB-2, as stated earlier MLGW made the decision to create a separate entity therefore its asset base will not be leveraged in the way proposed in this document.

4. **March 10, 1999 memo from Joel Halvorson to Wade Stinson** - the "Gene" referred to in the memo is Gene Crawford, Assistant Manager of Distribution Support. Joel Halvorson is a Consultant for Arthur D. Little (ADL). He suggested to me that MLGW employees should be involved in network planning and market analysis that would require a 50 percent time commitment between March 1999 and the end of April. However, we did not totally accept his recommendation. Gene Crawford and Mike Kissell were involved about 5 to 10 percent providing information to ADL regarding MLGW's standards for network planning so that ADL could make recommendations. This type of information is routinely made available to telecommunications providers interested in or involved in deploying facilities in Shelby County. However, MLGW did not get involved in market analysis activities as indicated in the next memo listed in WJB-3, i.e., the April 8, 1999 memo from Joel Halvorson to Wade Stinson.

5. **April 8, 1999 e-mail from Joel Halvorson to Wade Stinson** - ADL used an outside market research firm to do marketing analysis. I responded to the April 8, 1999 e-mail and told him to do the marketing analysis as long as it did not exceed the budget for developing a telecommunications business plan.

Q. PLEASE RESPOND TO EACH OF THE DOCUMENTS IN WJB-4.

- A. 1. **April 9, 1999 letter from Alex Lowe to W.L. Thompson** - This letter is dated before the operating agreement was signed. There is no licensing agreement between MLGW and Memphis Networkx.
2. **A&L Networks LLC December 1, 1998 response to MLGW Request for a Proposal for Strategic Telecommunication Partnership-2.21 reputation/ brandname** - This is a reference to the proposal presented by A&L Networks that was mentioned earlier in WJB-2. It is true that MLGW is a highly respected company in the Memphis area

and has a solid reputation as highly regarded employer, a provider of safe and reliable utilities services and a supporter of community development. Certainly as a part owner of Memphis Networkx, MLGW expects Memphis Networkx to engage in business in a way that will allow it to earn a similar reputation. To the extent that MLGW representatives are on the board of governors of Memphis Networkx they will seek to ensure that Memphis Networkx provides quality service. We expect the association with MLGW and its high standards to be a plus for Memphis Networkx as it enters the market.

There is also a reference in the excerpt that Mr. Barta extracted from the proposal which indicates that the telecom venture will not provide retail competition telecommunication services. During the process of developing a telecommunications business proposal the idea of the venture being merely a carriers' carrier was discussed, however, as the plan evolved it was determined that the telecommunications venture would provide services to end-users - initially to large businesses, and perhaps three years out to small businesses and residential customers.

3. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little, Inc. and Nortel Networks to MLGW for Strategic Telecommunications Partnership** - This is the same proposal mentioned in Mr. Barta's earlier exhibits. While it is true that MLGW is a highly respected employer, provides safe and reliable services and is a supporter of community development, MLGW has decided not to provide telecommunications directly through its telecommunications division, but through a separate entity.

4. **November 25, 1999 interdepartmental communication from Mike Kissell.** This is the same report which Mike Kissell made on a seminar that he attended. This refers to the statement of a speaker at a telecom seminar talking in general about telecom service provided by municipalities.

Q. LET'S MOVE ON TO WJB-5. PLEASE COMMENT ON THE DOCUMENTS THAT HAVE NOT BEEN RESPONDED TO IN WHICH BARTA BELIEVES THERE IS CONCERN REGARDING THE DEPLOYMENT OF FACILITIES AND ENTERING INTO CONTRACT PRIOR TO RECEIVING REGULATORY APPROVAL.

A. 1. June 1, 1999 letter from Alex Lowe to Wade Stinson and Larry Thompson - This letter refers to the installation of empty conduit tubing that was installed by A&L Underground while trenches were open during a construction project for installation of utilities for various subdivisions. The

raw conduit tubing has nothing in it that is operable. At a later time, it can be used to pull a conductor through it. Conductors that might be suitable to be pulled through this conduit are fiber, cable, phone cable or a small gas line. A&L Underground had a contract with MLGW to install gas and underground electric facilities and while the trenches were open, A&L Underground asked permission to install the raw conduit tubing at its own expense and risk. It is our understanding that Memphis Networkx is not committed to buy or lease this conduit tubing. It is further my understanding that A&L Underground has offered to sell or lease this conduit to other carriers such as BellSouth and Time Warner.

2. April 1, 1999 letter from Alex Lowe to J. B. Hollingsworth, General Manager, BellSouth Telecommunications, Inc. - This letter was in my file because I was copied on it. The memo is not related to the Memphis Networkx project but involves our correspondence between A&L Underground and BellSouth regarding Bell's desire to install cable in the MLGW trench - while the trench was open for a construction project was being performed by A&L Construction relating to other MLGW utilities.

3. May 24, 1999 meeting notes. These notes were made by me prior to the determination that the telecom venture would involve a separate entity. So any thought of transferring the conduit to MNet related to a transfer to the Telecommunications Division of MLGW. Please remember that a separate entity called MNet did not exist at this time. MNet was what we called the proposed telecom venture. There is no intent on transferring any of this conduit to Memphis Networkx. If Memphis Networkx decides to use it, they will negotiate a fair price like any other carrier. The reference to "need to move to MLGW crews and other contractors, also install conduit" refers to a thought that it may be wise for MLGW to consider installing raw conduit tubing in open trenches for use by MLGW or other third-parties for the possible uses listed above. It is cheaper to install this type of conduit while the trench is open as opposed to opening the trench later to install conduit. Once the conduit is installed, you can merely pull the applicable conductor through it at substantial savings. MLGW crews have never installed, nor are presently installing, any empty conduits.

4. September 29, 1999 memo from Mike Kissell to Wade Stinson - This is the same memo that was referred to in WJB-2, no. 2. This refers to the proposed contact with Entergy. Some of the proposed fibers that are to be deployed under the proposed contracts are for MLGW's use. The money included in the capital budget that is referenced there are for the MLGW fiber. The proposed contract contemplates that MLGW can request additional fiber which could be used for any third-parties requesting their

use. It is expected that MLGW would own all the fiber. As stated earlier, the contract has not been entered into and no fiber has been deployed.

5. October, 1999 Agreement between MLGW and A&L Networks-Tennessee, LLC to establish a joint venture to provide Telecom Services – John McCullough will address this document.

Q. PLEASE COMMENT ON WJB EXHIBIT 6 WHICH IS A MEMO FROM ALLEN LONG TO MICHAEL KISSELL AND WADE STINSON.

A. Allen Long is the Supervisor of Distribution Engineering for MLGW. This memo is dated September 15, 1999, which is before the Operating Agreement was signed. We were therefore still in the planning stages for the telecom venture. Being a layman and not a lawyer, he was curious as to why the plan was not leveraging the MLGW assets. Mr. Long has not been directly involved in the telecom venture and was merely expressing his opinions. MLGW construction crews have not run service drops nor done any of the other things that Mr. Long would suggest as possibility in the next to last paragraph of Exhibit WJB-6.

Q. PLEASE RESPOND TO MR. BARTA'S ALLEGATION THAT THERE WAS AN ATTEMPT BY MLGW TO RESTRICT ACCESS TO INFORMATION WHICH IS SET FORTH ON PAGE 13, LINES 17-36 THROUGH PAGE 14, LINES 1-8.

A. First, I think it is important to note that this is an e-mail that came from my files, and the only reason that the intervenors have access to this e-mail is because MLGW gave it to them pursuant to a public records request. It is not unusual for private companies engaged in competitive activities to want to keep their competitively sensitive documents out of the hands of their competitors. Certainly, Time Warner, NextLink and BellSouth have the same concerns regarding their own records. This is evidenced by their involvement in designing a protective order that would keep their confidential documents away from the premises of MLGW. Although I may have been sympathetic to those concerns, I can honestly say that no list of sensitive information was compiled and no documents were moved from MLGW to A&L or Memphis Networkx to prevent disclosure of sensitive information. As stated in MLGW and A&L's response to the data request from TCTA, "Max" (Max Williams, General Counsel of MLGW) and MLGW's other legal counsel were not aware of this e-mail until their review of documents in responding to John Farris' December 1999 public records request. "Ricky" (Ricky Williams, Counsel for A&L) was not aware of this e-mail until the data request by TCTA was made.


Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

MAR 23 2000 8:24 AM FR WALLER LANSDEN 615 780 2882 TO 451#010445#90554 P.27/34

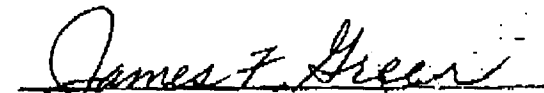
VERIFICATION

I, Wade Stinson, declare under penalty of perjury that I am authorized by Memphis Light Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.


Wade Stinson, Vice President of
Construction and Maintenance of
Memphis Light Gas Water Division

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 22nd day of March 2000.


Notary Public
My Commission Expires: 11-7-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)	
NETWORK, LLC FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND)	
NECESSITY TO PROVIDE INTRASTATE)	
TELECOMMUNICATIONS SERVICES)	DOCKET NO. 99-00909
AND JOINT PETITION OF MEMPHIS)	
LIGHT GAS AND WATER DIVISION,)	
A DIVISION OF THE CITY OF MEMPHIS,)	
TENNESSEE ("MLGW") AND A&L)	
NETWORKS-TENNESSEE, LLC ("A&L"))	
FOR APPROVAL OF AGREEMENT)	
BETWEEN MLGW AND A&L REGARDING)	
JOINT OWNERSHIP OF MEMPHIS)	
NETWORK, LLC)	

**PRE-FILED REBUTTAL TESTIMONY OF J. MAXWELL WILLIAMS
ON BEHALF OF MLGW**

Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE AND BUSINESS ADDRESS.

A. My name is J. Maxwell Williams. I am Vice President and General Counsel for Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee. My business address is Memphis Light Gas & Water Division, 220 South Main Street, Memphis, Tennessee 38103.

Q. DID YOU FILE DIRECT TESTIMONY ON BEHALF OF MLGW?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to generally respond to the testimony of William Barta, witness for the Tennessee Cable Telecommunications Association (TCTA).

Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING MR. BARTA'S TESTIMONY?

A. Yes. I find it curious that the TCTA has intervened and taken such an active role in this proceeding in light of the fact that they have responded to our data requests indicating that they are not aware of any of their members who have affiliates who are competitive local exchange carriers (CLECs) or otherwise regulated by the TRA. The TRA does not regulate cable service. The only way that Memphis Networkx operations would compete with cable is if another cable carrier leased facilities from Memphis Networkx to provide cable service. TCTA appears to be trying to create the perception of interest in protecting the MLGW electric rate payers from providing subsidies to Memphis Networkx, however, in reality, their intervention is designed to impede competition. The legislature has declared that public policy and the TRA should promote competition. Therefore, the Application and Joint Petitions should be approved.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

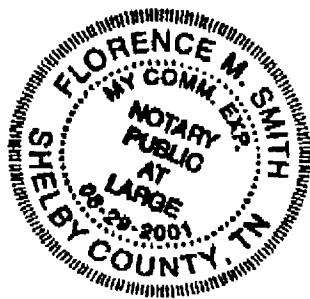
I, J. Maxwell Williams, declare under penalty of perjury that I am authorized by Memphis Light Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

J. Maxwell Williams
J. Maxwell Williams
Vice President and General Counsel
Memphis Light Gas Water Division

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Sworn to and subscribed before me this 23rd day of March, 2000.



Florence M. Smith
Notary Public
My Commission Expires: MY COMMISSION EXPIRES AUG. 29, 2001

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES) DOCKET NO. 99-00909
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC)

PRE-FILED REBUTTAL TESTIMONY OF WARD HUDDLESTON, JR.
ON BEHALF OF MEMPHIS NETWORK, LLC

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Ward Huddleston, Jr. My business address is 7555 Appling Center Drive, Memphis, Tennessee 38133-5069.

Q. DID YOU FILE DIRECT TESTIMONY ON BEHALF OF MEMPHIS NETWORK IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to some of the statements in William Barta's testimony which was filed on behalf of the Tennessee Cable Telecommunications Association ("TCTA") and to provide testimony regarding issues 3, 6, 7, 8 and 9 of the issues list approved by the TRA in this docket.

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. Mr. Barta has indicated that he agrees that the cross-subsidies safeguards that Memphis Network and MLGW plan to put in place are sufficient.

Therefore, clarification of his lack of understanding of the context of the correspondence referred to in his exhibit should alleviate the issue of cross-subsidy. Memphis Networkx concurs with the testimony of John McCullough with respect to the cross-subsidy safeguards. Memphis Networkx also agrees with John McCullough that there are statutes and oversight authority by the TRA, the comptroller and the city to assure compliance with TCA § 7-52-402-405, TCA § 7-52-103(d) and, if applicable, TCA § 65-5-208(c). Memphis Networkx intends to comply with the law and the orders of the authority.

Q. HAS A&L CONSTRUCTION AGREED TO TRANSFER CONDUIT TUBING TO MEMPHIS NETWORKX?

A. No. Memphis Networkx has no agreements with A&L or MLGW to transfer conduit tubing or any other facilities.

Q. WHAT REQUIREMENTS, IF ANY, ARE NECESSARY TO INSURE THAT START UP EXPENSES, ALREADY INCURRED, ARE CURRENTLY IDENTIFIED AND PROPERLY ALLOCATED?

A. None. The start up expenses already incurred have been identified and properly recognized on the books and records of Memphis Networkx. They are shown on confidential Exhibits A and B to this rebuttal testimony.

Q. DURING THE COURSE OF DISCOVERY IN THIS PROCEEDING, MEMPHIS NETWORKX CIRCULATED SOME UPDATED FINANCIAL DOCUMENTS. DO YOU WISH TO SUPPLEMENT YOUR APPLICATION WITH THESE DOCUMENTS?

A. I would like to file as a supplement to the application, Exhibit A, the Memphis Networkx, LLC Statement of Cash Flow, Balance Sheet and Statement of Operations for the period ended December 31, 1999; and Exhibit B - the February 29, 2000, Unaudited Balance Sheet of Memphis Networkx; and Exhibit C, an updated balance sheet as of February 29, 2000 of APTUS Networks, LLC. (The sole member of A&L Networkx, Tennessee, LLC.) All of these documents are confidential and filed under seal pursuant to the protective agreement/order in this docket. .

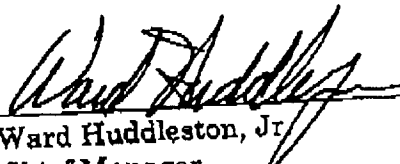
I believe Time Warner and the Tennessee Cable Telecommunications Association are opposed to the open access strategy of Memphis Networkx, that is to provide fair and unrestricted access to any internet service provider or other content provider. This is the same concern raised in congressional hearings regarding the AOL/Time Warner merger, since Time Warner has refused to provide open access to other content providers.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

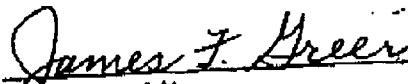
VERIFICATION

I, Ward Huddleston, Jr. declare under penalty of perjury that I am authorized by Memphis Networkx, LLC to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.


Ward Huddleston, Jr.
Chief Manager
Memphis Networkx, LLC

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 23rd day of March 2000.


Notary Public
My Commission Expires: 11-7-00